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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES JORDAN YOUNG,

Defendant and Appellant.

C036532

(Super. Ct. No. 980279)

After finding he had violated the terms of his probation, the sentencing court ordered defendant James Jordan Young to serve a previously imposed sentence of four years in prison for selling rock cocaine. On appeal, defendant contends the trial court abused its discretion by refusing to reinstate his probation because the court did not adequately consider various mitigating factors and improperly relied on his postprobationary conduct. We find no abuse of discretion and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In January 1998, defendant was charged with one count of selling rock cocaine. (Health & Safety Code, § 11352, subd. (a).) Because a doubt was raised about defendant's competency to stand trial, the court appointed a psychologist to evaluate defendant's competence and his amenability to probation. The psychologist, Dr. Shawn Johnston, diagnosed defendant as a paranoid schizophrenic, but could not determine whether defendant's condition was the result of drug abuse or was independent of drug usage. Dr. Johnston recommended a period of inpatient treatment to help restore defendant's competency and to clarify the etiology of his mental illness. Relying on Dr. Johnston's report, the court found defendant incompetent to stand trial and ordered him committed to a state hospital.

Defendant was admitted to Atascadero State Hospital on April 21, 1998, and transferred to Patton State Hospital on May 5, 1998. On August 6, 1998, the clinical staff and the medical director at Patton State Hospital determined defendant was mentally competent to stand trial. The Interdisciplinary Treatment Team concluded that defendant's problem "is with substance abuse and not the result of a mental illness." Accordingly, the criminal proceedings against defendant resumed.

In September 1998, defendant agreed to plead no contest to the sale charge and to admit probation violations in two earlier cases in exchange for a promise of no prison time at the outset and reinstatement of probation. Consistent with the probation officer's recommendation, the court reinstated, then terminated,

defendant's probation in the earlier cases. The court then placed defendant on three years probation in the present case, finding the case unusual because of the small amount of drugs involved and defendant's mental health issues.

In March 1999, the court revoked defendant's probation based on a declaration indicating he had been charged with unlawful use or influence of a controlled substance, had failed to appear in court on that charge, and had failed to provide a current address to probation. Defendant was apprehended in June 1999, and the probation officer prepared a pre-admission report recommending against reinstatement of probation and in favor of a mitigated term of three years in prison due to defendant's ongoing failure to abide by the conditions of probation. At a revocation hearing in July 1999, defendant admitted violating his probation by failing to obey all laws in exchange for the opportunity to enter a residential treatment program. His progress was to be reviewed in November to determine whether he should be reinstated on probation with a suspended sentence or sent to prison.

Defendant entered the work program at the Yolo Wayfarer Center on August 24, 1999, and began working as a carpenter. At the review hearing in November, because defendant was in compliance with the terms of his probation, the court imposed a four-year prison sentence for the sale charge but suspended its execution and reinstated him on probation.

In May 2000, the court once again revoked defendant's probation, this time based on a declaration that defendant had

left the residential treatment program without authorization, failed to advise probation of his whereabouts, failed to register as a drug offender with the police, and failed to make any payments toward his court ordered financial obligations. Apprehended a short time later, defendant denied the alleged violations, and a probation revocation hearing was held. Following testimony indicating defendant had left the residential treatment program without permission on January 10, 2000, the court found defendant had violated his probation as charged. The court then sent the matter out for another probation report to "give probation a chance to look into more of what his history is in terms of medication, et cetera."

In his supplemental report, the probation officer reviewed psychological and psychiatric evaluations on defendant dating back to 1991. The probation officer noted that defendant had been found incompetent to stand trial following a psychiatric examination in November 1991 in which the examining physician concluded defendant was paranoid, possibly due to amphetamine use. In June 1992, after declining to participate in an out-patient treatment program, defendant was committed to Napa State Hospital, where he did not display any evidence of a major mental disorder or psychotic symptomatology, although there were some suggestions he had an antisocial personality disorder with paranoid features. Based on defendant's mental condition and on the erroneous belief that defendant had remained in the

residential treatment program for 10 months,¹ the probation officer recommended defendant be placed back on probation, contrary to his previous recommendation of imprisonment.

At a hearing in July 2000, the court expressed its disagreement with the probation officer's recommendation that defendant be reinstated on probation. The court concluded that defendant should be committed to prison so that he could go to the California Rehabilitation Center (CRC). After one week's continuance, defense counsel requested the opportunity to have a new psychiatric report prepared to evaluate defendant's current mental condition. The court granted the request, stating: "You know, if you want a mental health evaluation, you can get it. But I believe, after reviewing his entire file, that whatever his mental health state at the moment, he has a problem with methamphetamine and, unless it's addressed, it won't matter about his mental health because if he self-medicated with meth, even medication is not going to help you because it disrupts your entire system. So unless and until he's willing to address his methamphetamine [use], even mental health treatment is not going to help him. [¶] . . . [¶] [E]very treatment physician will tell you, until they get off the meth, they can't treat him and, until he admits that he uses methamphetamine, has an issue,

¹ In fact, it appears defendant had remained in the residential treatment program for only four and a half months, from August 24, 1999, until January 10, 2000.

he can't be treated. So far, he's denied that. That's why I want him to go to CRC."

In September 2000, defendant was examined again by Dr. Shawn Johnston, the psychologist who had diagnosed him as a paranoid schizophrenic in 1998. This time, Dr. Johnston diagnosed defendant as suffering from clinical depression and substance abuse, although defendant's substance abuse appeared to Dr. Johnston "to be largely, if not entirely, in remission at this time." Dr. Johnston concluded that "rather than suffering from chronic or established paranoid schizophrenia, the present results strongly suggest that he has more likely suffered from a combination of emotional disturbance (including both anxiety and depression), along with substantial paranoid personality traits." Dr. Johnston further concluded that "these pre-existing pathologies . . . were aggravated by his methamphetamine abuse." Dr. Johnston concluded by expressing his support for the probation officer's recommendation that defendant be reinstated on probation.

A final hearing was held on September 8, 2000. Despite Dr. Johnston's report, the court remained steadfast in its refusal to reinstate defendant's probation. In the court's view, defendant needed "treatment in a situation where he doesn't have the option to walk away." The court continued: "Now, I think he needs CRC. And I have -- everything that's come back to me suggests that that's the case. There is a profound case of denial here with a need for treatment. If you want CRC and the district attorney agrees that he needs the treatment, fine. If

not we can get a doctor's report about his addiction and in danger of being addicted." The district attorney pointed out that they already had a report from Dr. Johnston, who did not find that defendant was an addict or in imminent danger of becoming one. Acknowledging this point, the court told defense counsel: "[F]rankly, this report has put me in a position where unless the district attorney is willing to agree with me and stipulate or you are then I have to send him to prison. I frankly don't think that is where he should go. I think he should go to CRC." The court then addressed defendant directly, stating: "This is not about you are not making progress because I think you have, but you definitely have not taken responsibility, nor have you addressed the issue of your long term addiction to methamphetamine. And that's why I want you to go to CRC. And if you don't want to go, I am going to send you to prison. And I may have to anyway because unless they are -- you can take some responsibility for it, I am not in a position where I can even based on the record I have now send you there." When defendant refused to agree to go to CRC, the court dissolved the stay on his previously imposed sentence and remanded him to the Department of Corrections to serve his four-year prison term.

DISCUSSION

Defendant contends the sentencing court abused its discretion by refusing to reinstate his probation because the court did not adequately consider various mitigating factors and

improperly relied on his postprobationary conduct. We find no abuse of discretion.

We first address defendant's claim that the sentencing court improperly relied on his postprobationary conduct. Citing rule 435(b)(1) of the California Rules of Court, defendant contends the court improperly relied on his unauthorized departure from the court ordered residential treatment program in January 2000 in deciding not to reinstate his probation. Defendant is mistaken for two reasons. First, rule 435(b)(1) applies only in situations where "the imposition of sentence was previously suspended."² Here, at the review hearing in November 1999, the court did not suspend the *imposition* of defendant's sentence; instead, the court imposed a four-year prison sentence on defendant, but suspended the *execution* of that sentence. Second, rule 435(b)(1) only prohibits the court from considering events subsequent to the original grant of probation "in selecting the base term" of the defendant's prison sentence. Rule 435(b)(1) "has no application to the decision making

² "Upon revocation and termination of probation pursuant to section 1203.2, when the sentencing judge determines that the defendant shall be committed to prison: [¶] (1) *If the imposition of sentence was previously suspended*, the judge shall impose judgment and sentence after considering any findings previously made and hearing and determining the matters enumerated in rule 433(c). [¶] The length of the sentence shall be based on circumstances existing at the time probation was granted, and subsequent events may not be considered in selecting the base term nor in deciding whether to strike or specifically not order the additional punishment for enhancements charged and found." (Cal. Rules of Court, rule 435(b)(1), italics added.)

process delimiting the initial inquiry -- namely whether or not to incarcerate the defendant or reinstate him to probation." (*People v. White* (1982) 133 Cal.App.3d 677, 681.) Consequently, in September 2000, when the court considered whether to reinstate defendant on probation or incarcerate him for the previously imposed prison term, rule 435(b)(1) did not apply. Instead, the court's action was governed by rule 435(b)(2), which provides: "If the execution of sentence was previously suspended, the judge shall order that the judgment previously pronounced be in full force and effect and that the defendant be committed to the custody of the Director of Corrections for the term prescribed in that judgment." That is what happened here.

We turn to defendant's claim that the sentencing court abused its discretion by failing to adequately consider various mitigating factors when it decided not to reinstate defendant's probation. Specifically, defendant contends the court did not adequately consider his "longstanding, well-documented history of mental problems" or the fact that he is "a drug addict." We disagree.

"Sentencing choices such as the one at issue here, whether to reinstate probation or sentence a defendant to prison, are reviewed for abuse of discretion. 'A denial or a grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner.' [Citation.] A court abuses its discretion 'whenever the court exceeds the bounds of reason, all

of the circumstances being considered.' [Citation.] We will not interfere with the trial court's exercise of discretion 'when it has considered all facts bearing on the offense and the defendant to be sentenced.'" (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.)

We find no abuse of discretion in the sentencing court's decision not to reinstate defendant's probation. The record demonstrates that the court carefully considered defendant's mental condition and its relationship to his drug usage in deciding it would be inappropriate to reinstate defendant on probation. Although defense counsel argued that defendant should be given a chance at reinstatement because "any probation violations are based upon his mental illness," the sentencing court properly pointed out that there was nothing in the record to support that argument. Furthermore, based on the record before it, there was substantial evidence to support the sentencing court's conclusion that defendant's mental problems were secondary to his drug problem, which defendant largely refused to acknowledge and which Dr. Johnston opined was "largely, if not entirely, in remission." Despite Dr. Johnston's opinion, the court offered defendant the opportunity to deal with his drug problem in a secure environment, by a referral to CRC, but defendant declined that offer. It is true, as defendant observes, that "there were certainly less restrictive alternatives available to the court." However, given defendant's prior failure to remain in a residential treatment program while on probation, the court's refusal to

give him another chance to participate in such a program, or to otherwise attempt to address his drug problem while on probation, cannot be characterized as exceeding the bounds of reason and therefore did not constitute an abuse of the court's discretion.

DISPOSITION

The judgment is affirmed.

MORRISON, J.

We concur:

BLEASE, Acting P.J.

RAYE, J.